IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 2180 of 1982

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANZA SHIVLAL LADHUBHAI - Applicant(s)

Versus

VASANTBEN NARAN - Opponent(s)

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Appearance :

MR MANOJ N POPAT for Petitioner No(s).: 1.
Respondent No(s).: 1 UNSERVED.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 07/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 9th September, 1982 passed by the learned District Judge, Jamnagar in Regular Civil Appeal No.176/1981, the appellant (defendant in Regular Civil Suit No.311/1978)

has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The respondent-plaintiff is the owner of a house situated at Jamnagar. One of the rooms in the said house was leased to the petitioner-defendant for a monthly rent of Rs.30=00. The defendant was in arrears of rent since 1st October, 1977. On 16th May, 1978 the plaintiff gave notice as envisaged by Section 12(2) of the Rent Act and demanded the amount of rent due since 1st October, 1977. The said notice was replied by the defendant. The defendant questioned the ownership of the plaintiff and the amount of agreed rent. As the defendant failed to pay the amount of rent due and to vacate the suit room, the plaintiff instituted Regular Civil Suit No.311/1978 in the Court of Civil Judge (J.D.), Jamnagar for recovery of the possession of the suit room and the amount of arrears of rent. The learned Civil Judge, by judgment and order dated 3rd October, 1981, allowed the suit and passed decree for recovery of possession and the arrears of rent in favour of the plaintiff. The learned Civil Judge found

that the plaintiff was the landlord and the agreed rent of the suit room was Rs.30=00 per month; that the defendant was in arrears of rent since 1st October, 1977; that the defendant had not raised dispute as to the standard rent. In the opinion of the learned Civil Judge the matter was governed by Section 12(3)(a) of the Rent Act and decree for eviction was inevitable. The learned Judge also observed that pending the suit the defendant did not pay or tender in the Court the amount of rent due nor did he pay or tender the rent pending the suit. In that view of the matter, the defendant would not be entitled to protection under Section 12(3)(b) of the Rent Act either.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No.176/1981 in the Court of District Judge, Jamnagar. The learned District Judge, by impugned judgment and order dated 9th September, 1982, confirmed the finding recorded by the learned Civil Judge and the decree for eviction passed against the defendant. The lower appellate Court also held that the matter was covered by Section 12(3)(a) of the Rent Act. It has also been recorded that even if the defendant were entitled to

protection under Section 12(3)(b) of the Rent Act, he had forfeited such protection by not depositing the amount of rent due and by not depositing the rent regularly every month pending the suit. Pending the Appeal the defendant paid the rent @ Rs.10=00 per month as against the agreed rent of Rs.30=00 per month. Therefore, the present Revision Application.

The facts recorded by the lower appellate Court have not been controverted in the present Revision Application. In view of the above finding that the defendant was the tenant in default and that he was not ready and willing to pay the rent, the decree for eviction was inevitable. No case for interference is made out. The Revision Application is dismissed. Rule is discharged. Interim relief is vacated.

(Ms. R.M.Doshit, J.)

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